

## SENATE BILL No. 112

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-31-3-14.5; IC 25-1-1.1-2; IC 25-1-1.1-3; IC 31-37-19-10; IC 34-24-1-1; IC 35-48-4.

**Synopsis:** Sentencing for drug offenses. Enhances various penalties for possessing controlled substances, counterfeit substances, cocaine, narcotic drugs, marijuana, hash oil, or hashish so that a person who possesses the drugs may be subjected to a penalty that is as serious as if the person had been dealing the drugs. Enhances the penalty for visiting a common nuisance from a Class B misdemeanor to a Class D felony, which is the same penalty for maintaining the common nuisance. Repeals a provision that allows for a conditional dismissal of a case in which a person pleads guilty to possessing marijuana or hashish provided that the person has no previous convictions for offenses relating to controlled substances. (A similar provision  
(Continued next page))

**Effective:** July 1, 1999.

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**Howard**

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January 6, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Digest Continued

allowing for the conditional dismissal of the case if the person is dealing in marijuana or hashish does not exist.) Makes conforming changes.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 112

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 16-31-3-14.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14.5. The commission  
3 may permanently revoke a license or certificate under procedures  
4 provided by section 14 of this chapter if the individual who holds the  
5 license or certificate issued under this title is convicted of any of the  
6 following:
- 7 (1) Dealing in cocaine or a narcotic drug under IC 35-48-4-1.
  - 8 (2) Dealing in a schedule I, II, or III controlled substance under  
9 IC 35-48-4-2.
  - 10 (3) Dealing in a schedule IV controlled substance under  
11 IC 35-48-4-3.
  - 12 (4) Dealing in a schedule V controlled substance under  
13 IC 35-48-4-4.
  - 14 (5) Dealing in a substance represented to be a controlled  
15 substance under IC 35-48-4-4.5.
  - 16 (6) Knowingly or intentionally manufacturing, advertising,  
17 distributing, or possessing with intent to manufacture, advertise,  
18 or distribute a substance represented to be a controlled substance



under IC 35-48-4-4.6.

(7) Dealing in a counterfeit substance under ~~IC 35-48-4-5.~~  
**IC 35-48-4-5(a).**

(8) Dealing in marijuana, hash oil, or hashish under  
IC 35-48-4-10(b).

(9) Conspiracy under IC 35-41-5-2 to commit an offense listed in  
subdivisions (1) through (8).

(10) Attempt under IC 35-41-5-1 to commit an offense listed in  
subdivisions (1) through (8).

(11) A crime of violence (as defined in IC 35-50-1-2(a)).

(12) An offense in any other jurisdiction in which the elements of  
the offense for which the conviction was entered are substantially  
similar to the elements of an offense described under subdivisions  
(1) through (11).

SECTION 2. IC 25-1-1.1-2 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. A board, a  
commission, or a committee may suspend or revoke a license or  
certificate issued under this title by the board, the commission, or the  
committee if the individual who holds the license or certificate is  
convicted of any of the following:

(1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.

(2) Possession of a controlled substance under IC 35-48-4-7(a)  
**or IC 35-48-4-7(b).**

(3) Fraudulently obtaining a controlled substance under  
~~IC 35-48-4-7(b).~~ **IC 35-48-4-7(c).**

(4) Manufacture of paraphernalia as a Class D felony under  
IC 35-48-4-8.1(b).

(5) Dealing in paraphernalia as a Class D felony under  
IC 35-48-4-8.5(b).

(6) Possession of paraphernalia as a Class D felony under  
IC 35-48-4-8.3(b).

(7) Possession of marijuana, hash oil, or hashish as a Class D  
felony under IC 35-48-4-11.

(8) **Visiting or** maintaining a common nuisance under  
IC 35-48-4-13.

(9) An offense relating to registration, labeling, and prescription  
forms under IC 35-48-4-14.

(10) Conspiracy under IC 35-41-5-2 to commit an offense listed  
in subdivisions (1) through (9).

(11) Attempt under IC 35-41-5-1 to commit an offense listed in  
subdivisions (1) through (9).

(12) An offense in any other jurisdiction in which the elements of



the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 3. IC 25-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. A board, a commission, or a committee shall revoke or suspend a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

- (1) Dealing in cocaine or a narcotic drug under IC 35-48-4-1.
- (2) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.
- (3) Dealing in a schedule IV controlled substance under IC 35-48-4-3.
- (4) Dealing in a schedule V controlled substance under IC 35-48-4-4.
- (5) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.
- (6) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.
- (7) Dealing in a counterfeit substance under ~~IC 35-48-4-5~~ **IC 35-48-4-5(a).**
- (8) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).
- (9) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8).
- (10) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8).
- (11) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (10).
- (12) A violation of any federal or state drug law or rule related to wholesale legend drug distributors licensed under IC 25-26-14.

SECTION 4. IC 31-37-19-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) This section applies to a child who:

- (1) is adjudicated a delinquent child for an act that if committed by an adult would be:
  - (A) a felony against a person;



- 1 (B) a Class A or Class B felony that is a controlled substances  
 2 offense under IC 35-48-4-1 through ~~IC 35-48-4-5~~;  
 3 **IC 35-48-4-5(a)**; or  
 4 (C) burglary as a Class A or Class B felony under  
 5 IC 35-43-2-1;  
 6 (2) is at least fourteen (14) years of age at the time the child  
 7 committed the act for which the child is being placed; and  
 8 (3) has two (2) unrelated prior adjudications of delinquency for  
 9 acts that would be felonies if committed by an adult.  
 10 (b) A court may place the child in a facility authorized under this  
 11 chapter for not more than two (2) years.  
 12 (c) Notwithstanding IC 11-10-2-5, the department of correction may  
 13 not reduce the period ordered under this section (or IC 31-6-4-15.9(n)  
 14 before its repeal).  
 15 **SECTION 5. IC 34-24-1-1 IS AMENDED TO READ AS**  
 16 **FOLLOWS [EFFECTIVE JULY 1, 1999]:** Sec. 1. (a) The following  
 17 may be seized:  
 18 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
 19 intended for use by the person or persons in possession of them to  
 20 transport or in any manner to facilitate the transportation of the  
 21 following:  
 22 (A) A controlled substance for the purpose of committing,  
 23 attempting to commit, or conspiring to commit any of the  
 24 following:  
 25 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).  
 26 (ii) Dealing in a schedule I, II, or III controlled substance  
 27 (IC 35-48-4-2).  
 28 (iii) Dealing in a schedule IV controlled substance  
 29 (IC 35-48-4-3).  
 30 (iv) Dealing in a schedule V controlled substance  
 31 (IC 35-48-4-4).  
 32 (v) Dealing in a counterfeit substance (~~IC 35-48-4-5~~);  
 33 **(IC 35-48-4-5(a))**.  
 34 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).  
 35 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).  
 36 (viii) Dealing in marijuana, hash oil, or hashish  
 37 (IC 35-48-4-10).  
 38 (B) Any stolen (IC 35-43-4-2) or converted property  
 39 (IC 35-43-4-3) if the retail or repurchase value of that property  
 40 is one hundred dollars (\$100) or more.  
 41 (C) Any hazardous waste in violation of IC 13-30-6-6.  
 42 (2) All money, negotiable instruments, securities, weapons,

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communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

- (A) commit, attempt to commit, or conspire to commit;
  - (B) facilitate the commission of; or
  - (C) escape from the commission of;
- murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

- (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- (B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to



seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a Class A felony **or** Class B felony. ~~or Class C felony.~~

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 6. IC 35-48-4-4.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.6. (a) A person who knowingly or intentionally:

(1) manufactures;

(2) finances the manufacture of;

(3) advertises;

(4) distributes; or

(5) possesses with intent to manufacture, finance the manufacture of, advertise, or distribute;

a substance described in section 4.5 of this chapter commits a Class C felony.

(b) A person who knowingly or intentionally possesses a substance described in section 4.5 of this chapter commits a ~~Class C misdemeanor~~ **Class C felony**. However, the offense is a ~~Class A misdemeanor~~ **Class B felony** if the person has a previous conviction under this section.

(c) In any prosecution brought under this section it is not a defense that the person believed the substance actually was a controlled substance.

(d) This section does not apply to the following:

(1) The manufacture, financing the manufacture of, processing, packaging, distribution, or sale of noncontrolled substances to



licensed medical practitioners for use as placebos in professional practice or research.

(2) Persons acting in the course and legitimate scope of their employment as law enforcement officers.

(3) The retention of production samples of noncontrolled substances produced before September 1, 1986, where such samples are required by federal law.

SECTION 7. IC 35-48-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) A person who:

(1) knowingly or intentionally:

(A) creates;

(B) delivers; or

(C) finances the delivery of;

a counterfeit substance; or

(2) possesses, with intent to:

(A) deliver; or

(B) finance the delivery of;

a counterfeit substance;

commits dealing in a counterfeit substance, a Class D felony.

**(b) A person who knowingly or intentionally possesses a counterfeit substance commits possessing a counterfeit substance, a Class D felony.**

SECTION 8. IC 35-48-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II commits possession of cocaine or a narcotic drug, a ~~Class D felony~~, **Class B felony** except as provided in subsection (b).

(b) The offense is **a Class A felony if:**

(1) ~~a Class E felony~~ if the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; **or**

(2) ~~a Class B felony~~ if the person in possession of the cocaine or narcotic drug possesses ~~less than three (3) grams of pure or adulterated the~~ cocaine or narcotic drug:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex. ~~and~~

~~(3) a Class A felony if the person possesses the cocaine or~~



1       narcotic drug in an amount (pure or adulterated) weighing at least  
2       three (3) grams:

3       (A) on a school bus; or

4       (B) in, on, or within one thousand (1,000) feet of:

5           (i) school property;

6           (ii) a public park; or

7           (iii) a family housing complex.

8       SECTION 9. IC 35-48-4-7 IS AMENDED TO READ AS  
9       FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) A person who,  
10       without a valid prescription or order of a practitioner acting in the  
11       course of his professional practice, knowingly or intentionally  
12       possesses a controlled substance (pure or adulterated) classified in  
13       schedule I, II, **or III, or IV**, except marijuana or hashish, commits  
14       possession of a controlled substance, a ~~Class D felony~~ **Class B felony**.  
15       However, the offense is a ~~Class C felony~~ **Class A felony** if the person  
16       in possession of the controlled substance possesses the controlled  
17       substance:

18           (1) on a school bus; or

19           (2) in, on, or within one thousand (1,000) feet of:

20               (A) school property;

21               (B) a public park; or

22               (C) a family housing complex.

23       **(b) A person who, without a valid prescription or order of a**  
24       **practitioner acting in the course of his professional practice,**  
25       **knowingly or intentionally possesses a controlled substance (pure**  
26       **or adulterated) classified in schedule IV, except marijuana or**  
27       **hashish, commits possession of a schedule IV controlled substance,**  
28       **a Class C felony. However, the offense is a Class B felony if the**  
29       **person possesses the substance:**

30           (1) on a school bus; or

31           (2) in, on, or within one thousand (1,000) feet of:

32               (A) school property;

33               (B) a public park; or

34               (C) a family housing complex.

35       ~~(b)~~ (c) A person who, without a valid prescription or order of a  
36       practitioner acting in the course of his professional practice, knowingly  
37       or intentionally obtains:

38           (1) more than four (4) ounces of schedule V controlled substances  
39           containing codeine in any given forty-eight (48) hour period  
40           unless pursuant to a prescription;

41           (2) a schedule V controlled substance pursuant to written or  
42           verbal misrepresentation; or



(3) possession of a schedule V controlled substance other than by means of a prescription or by means of signing an exempt narcotic register maintained by a pharmacy licensed by the Indiana state board of pharmacy;  
 commits a Class D felony. **However, the offense is a Class B felony if the person possesses the substance on a school bus or in, on, or within one thousand (1,000) feet of school property, a public park, or a family housing complex.**

SECTION 10. IC 35-48-4-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;
- (2) knowingly or intentionally grows or cultivates marijuana; or
- (3) knowing that marijuana is growing on his premises, fails to destroy the marijuana plants;

commits possession of marijuana, hash oil, or hashish, a Class A misdemeanor. ~~However,~~

(b) The offense is:

(1) a Class D felony ~~(i)~~ if:

(A) the amount involved is more than thirty (30) grams **but less than ten (10) pounds** of marijuana or two (2) grams **but less than three hundred (300) grams** of hash oil or hashish; or ~~(ii)~~ if

(B) the person has a prior conviction of an offense involving marijuana, hash oil, or hashish; **and**

(2) **a Class C felony if the amount involved is ten (10) pounds or more of marijuana or three hundred (300) or more grams of hash oil or hashish or the person possessed the marijuana, hash oil, or hash:**

(A) **on a school bus; or**

(B) **in, on, or within one thousand (1,000) feet of:**

(i) **school property;**

(ii) **a public park; or**

(iii) **a family housing complex.**

SECTION 11. IC 35-48-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) A person who knowingly or intentionally visits a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance, a ~~Class B misdemeanor~~. **Class D felony.**

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:



1 (1) by persons to unlawfully use controlled substances; or  
 2 (2) for unlawfully:  
 3 (A) keeping;  
 4 (B) offering for sale;  
 5 (C) selling;  
 6 (D) delivering; or  
 7 (E) financing the delivery of;  
 8 controlled substances, or items of drug paraphernalia as described  
 9 in IC 35-48-4-8.5;  
 10 commits maintaining a common nuisance, a Class D felony.  
 11 SECTION 12. IC 35-48-4-12 IS REPEALED [EFFECTIVE JULY  
 12 1, 1999].

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